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8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

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11 JOHN ALLEN) ACTION NO: C-08-1698 MMC
12 Plaintiff,)
13 v.) [PROPOSED] ORDER DENYING
14) DEFENDANT'S MOTION TO
15) DISMISS [FRCP 12(b)(6)]
16) Date: May 23, 2008
17) Time: 9:00 a.m.
18) Location: Courtroom 7, 19th Floor
DOES 1 TO 50, 450 Golden Gate Ave.
Defendant. San Francisco, CA 94102

19 The Motion to Dismiss of plaintiff JOHN ALLEN'S first amended complaint,
20 came regularly for hearing on May 23, 2008. Shawn Ridgell appeared as counsel for
21 the plaintiff, and Jeffrey S. Allison appeared as counsel for the defendant. The court,
22 having considered the moving and supporting papers, and good cause appearing therfor,

23 || IT IS ORDERED that:

24 1. Defendant's motion to dismiss with respect to plaintiff's first cause of action for
25 negligent interference with prospective economic advantage is DENIED. A sufficient
26 cause of action has been established. See North American Chemical Co. v. Superior
27 Court (1997) 59 Cal. App. 4th 764, 786 69 Cal. Rptr. 2d 466. Plaintiff have satisfied
28 the elements listed in order to establish a cause of action.

1 2. Defendant's motion to dismiss with respect to plaintiff's second cause of action for
2 violation of the Fair Credit Billing Act is DENIED. A sufficient cause of action has
3 been established. A party has a cause of action against under 15 U.S.C. §§1637(b),
4 1666(b)(6) and 1666a when the creditor reports to a credit bureau that an account is
5 delinquent after the account has been paid in full, and when the creditor fails to send
6 a periodic statement to the consumer. Sanders v. Ameritrust of Cincinnati (S.D. Ohio
7 1984) 587 F. Supp. 896, 899. Here, plaintiff alleges that his loan with defendant was
8 paid in full before defendant reported the loan as delinquent. Plaintiff further alleges
9 that defendant failed to send billing statements to him. Although plaintiff asserts an
10 incorrect legal theory in the first amended complaint, he has alleged sufficient facts to
11 state a cause of action under 15 U.S.C. §§1637(b), 1666(b)(6) and 1666a.

12 Defendant has 10 days from the date of this Order to file and serve an Answer
13 to the first amended complaint.

14 Dated:

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16 Hon. Maxine Chesney
U.S. District Court Judge

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